


OLC RECORD 0077

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	<p>CENTRAL INTELLIGENCE AGENCY Office of Legislative Counsel Washington, D. C. 20505 Telephone: </p>
	<p>TO: Mr. William G. Miller, Staff Director Select Committee on Intelligence United States Senate</p>
<p>6 July 1978</p>	
<p>Bill:</p> <p>In connection with our discussions concerning the Civil Service Reform legislation, here are two papers we provided to the House Post Office and Civil Service Committee relating to the application of Title I of the legislation to intelligence agencies. The House bill, of course, is somewhat different from the Senate version and the amendment we propose may not emerge in exactly the same form, but I think the position reflected in the amendment and accompanying explanation addresses the points which you raised, particularly as regards application of the merit principles. Please let me know what you think.</p> <p style="text-align: center;">SIGNED</p> <p style="text-align: center;"></p> <p style="text-align: center;">Assistant Legislative Counsel</p>	

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FORM 1533 OBSOLETE
6-68 PREVIOUS EDITIONS

(40)

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PROPOSED AMENDMENTS CONCERNING THE
APPLICABILITY TO INTELLIGENCE AGENCIES
OF THE MERIT PRINCIPLES CONTAINED IN
H. R. 11280, THE
"CIVIL SERVICE REFORM ACT OF 1978"

1. AMEND PROPOSED "CHAPTER 23. - MERIT SYSTEM PRINCIPLES"
OF THE COMMITTEE PRINT DATED JUNE 15, 1978 OF H. R. 11280
AS FOLLOWS:

- a. Amend subsection (a) to read as follows:

- "(a)(1) Except as provided in paragraph
(2) of this subsection and in subsection (e) of
section 2302, this chapter shall apply to - "

* * *

- b. Insert a new paragraph (2) to subsection (a)
of section 2301, as follows:

- "(2) This Chapter shall not apply to the
Central Intelligence Agency or to the National
Security Agency except that these Agencies
should adhere to the concepts contained in
the merit principles in subsection (c) of this
section, but the merit principles shall not
be construed to impair the authorities and
responsibilities set forth in the National
Security Act of 1947, as amended (50 U.S.C.
403), the Central Intelligence Agency Act of
1949, as amended (50 U.S.C. 403a et seq.),
Pub. L. 86-36, 73 Stat. 63, and Pub. L. 88-290,
78 Stat. 168.

- c. Delete paragraph (B) of subsection (e) of
section 2302.

2. IN EXPLANATION OF THE AMENDMENTS PROPOSED ABOVE,
THE FOLLOWING REPORT LANGUAGE IS PROPOSED:

[Note: The proposed amendments to subsection (a) of section 2301 and paragraph (B) of subsection (e) of Section 2302 would not alter the scope of these sections except insofar as excluding the Central Intelligence Agency and the National Security Agency from the provisions of Chapter 23 generally, but providing that these named agencies shall adhere to the merit principles in paragraph (c) of section 2301 under the terms specified in the new proposed paragraph (2) of subsection (a) of section 2301.]

Paragraph (2) of subsection (a) of section 2301 is intended to make clear and reflect that the Central Intelligence Agency (hereinafter "CIA") and the National Security Agency (hereinafter "NSA") shall not be subject to the provisions of Chapter 23 except that CIA and NSA should adhere to the merit system principles in subsection (c) to the extent possible consistent with national security considerations. For example, the Committee intends that the personnel management of CIA and NSA should be implemented so that all applicants and employees receive fair and equitable treatment without regard to the factors enumerated in paragraph (c) (2), but that adherence to these factors shall be fully consistent with the need to ensure that applicants and employees meet the security and loyalty requirements of those agencies. These requirements are based on the authorities and requirements contained in the National Security Act of 1947, as amended (50 U.S.C. 403), the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a et seq.), Pub. L. 86-36, 73 Stat. 63, Pub. L. 88-290, 78 Stat. 168. It is also necessary however, that CIA and NSA not be subject to the other provisions of this Chapter because these Agencies, based on their unique missions and essential security needs, must retain the flexibility in their personnel management to meet the demands imposed by the President and the National Security Council, and which reflect the ever-changing circumstances and character of events abroad. The Committee, while recognizing and supporting these considerations, however, expects that the process of developing comprehensive intelligence charter legislation (now before the Select Committee on Intelligence) will consider fully the particular personnel management systems and needs of CIA and NSA. The action of this Committee in adopting paragraph 2301 (a)(2) is consistent with maintaining the status quo as regards the status of the personnel systems of CIA and NSA.

SPECIAL CONSIDERATIONS: APPLICABILITY TO INTELLIGENCE
AGENCIES OF MERIT PRINCIPLES IN TITLE I OF H.R. 11280,
COMMITTEE PRINT DATED JUNE 15, 1978

The special character and responsibilities of CIA and NSA require these agencies to maintain special employment criteria which may be different from the employment standards of other Government departments and agencies. These requirements are reflected in the National Security Act of 1947, as amended (50 U.S.C. 403) and the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a et seq.), Pub. L. No. 86-36 and Pub. L. No. 88-290. In accordance with these special national responsibilities, the Agencies are obliged to judge carefully the suitability of each person selected for employment. To assist in this determination, an extensive investigation is conducted with regard to the loyalty and background of each person. This investigation includes but is not limited to inquiries concerning professional competence, or any facts which furnish reason to believe that the individual may be susceptible to coercion, influence or pressure which may cause him to act contrary to the best interests of the national security. These procedures are necessary in order to ensure that only persons of demonstrable loyalty and who meet necessary rigid security suitability requirements are hired and have access to sensitive national security information.

In furtherance of these considerations, it is necessary for these agencies to retain flexibility in their personnel management. The merit system principles, however, would require implementation without consideration for these national security concerns. In general, the CIA has always followed merit principles, and the Agency supports and will follow the principles in Title I of H.R. 11280 to the extent they are commensurate with security and suitability considerations. It is therefore necessary to apply the specific merit principles contained in pages 7 and 8 of H.R. 11280 to these considerations:

1. Merit Principle (1) on page 7 of H.R. 11280.

This provision dictates that "Recruitment ... and selection and advancement should be determined solely on the basis of ... open competition" (emphasis added). In the case of CIA, while applicants are judged on the basis of merit and matched against job openings, an applicant acceptable "on the merits" and based on "open competition" must nonetheless meet the Agency's security and suitability criteria in order to obtain a position. The language of merit principle (1)-- "determined solely on the basis of ... open competition"--would not appear to allow for these security and suitability considerations to be

taken into account. Moreover, the "open competition" factor could be construed to require that applicants be made aware of details of particular positions or projects for which openings have occurred--even though such information might itself be classified or involve intelligence sources and methods--in order to meet the dictates of completely "fair and open competition." Such results are anomolous and conflict with basic security and suitability considerations.

Example: The CIA frequently has unique and highly sensitive job requirements (such as in the technical collection field) which require the selection of applicants who possess combinations of special talents, experience and characteristics to fulfill these job requirements. These circumstances, particularly the sensitivity of the positions themselves, clearly dictate that positions cannot be "open" and "advertised."

Example: An applicant applying for a position as a CIA linguist scores 98 out of 100 on a language ability test. A security check, however, discloses that the applicant has several close relatives living in a hostile country or that the applicant has been or is associated with a communist party organization. These factors must be taken into consideration in determining the individual's loyalty and perceptability to hostile overtures, a result not possible if the CIA were required to recruit "solely" on the basis of "skills" and "open competition."

Example: There is an opening in an extremely sensitive on-going and time-sensitive agency operation. To solicit internal applicants on the basis of completely "open competition" would require that notices (disclosing functions, organization and other details of the job) be sent to all Agency employees which would violate the essential need to minimize the dissemination of sensitive and compartmented information.

Example: The Agency must often send an employee on few hours notice to another country in response to a changing circumstance and events abroad. The Agency needs flexibility in allocating personnel resources to rapidly shifting requirements. These situations might be construed to be contrary to the terms of the merit principles as stated in (1).

2. Merit Principle (2) on page 7 of H.R. 11280.

This principle appears to require that "political affiliation" or "national origin," among other factors, could not be taken into account as regards personnel management of applicants and employees. As noted above, there are very real security suitability considerations relating to such factors as an individual's country of origin and affiliation with certain political movements that could very well have a measurable, and possibly devastating, effect on a person's loyalties and susceptibility to adverse interests.

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Example: Customs and mores of particular foreign cultures may very well dictate that persons of particular national origins would not and could not be effective if assigned to those countries. The CIA, therefore, must retain the flexibility to take such factors into account in making assignments.

Example: An applicant or an employee is a card-carrying communist. Under the provision of the bill, the factor should not be considered in making a determination whether or not the Agency should hire or retain him.